



Commonwealth of Virginia
Virginia Information Technologies Agency

**PAGING SERVICES (EASTERN SHORE/NORTHERN NECK)
OPTIONAL USE CONTRACT – VITA WAIVER REQUIRED***

DATE: August 17, 2006

CONTRACT #: VA-001214-ARCH

VENDOR: Arch Wireless
3805 Gaskins Road
Richmond, VA 23233

FIN: 22-3317420

CONTACT PERSON: Sandy Cossu
5480 Virginia Beach Blvd.
Suite 102
Virginia Beach, VA 23462
Phone: 757-490-3858
Fax: 757-490-9810
E-mail: sandy.cossu@arch.com

TERM: June 14, 2006 – December 13, 2006

PAYMENT: 30 Days

For Additional Information Please Call:

Contract Information:

Doug Leslie
Phone: 804-371-5213
E-mail: doug.leslie@vita.virginia.gov
Fax: 804-371-5969

NOTE: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this agreement.

*Use of this contract shall be authorized on an “exception” basis as determined by the Virginia Information Technologies Agency, Director of Telecommunications. Potential users of this contract shall request a waiver stating why the existing Metrocall paging contract is not suitable for their specific requirement.



COMMONWEALTH *of* VIRGINIA

Virginia Information Technologies Agency
110 SOUTH SEVENTH STREET
RICHMOND, VIRGINIA 23219

July 24, 2006

ARCH WIRELESS
Dianne Byrnes
dianne.byrnes@usamobility.com
805 Gaskins Road
Richmond, VA 23233

Re: Contract # VA-001214-ARCH Notice

Dear Dianne Byrnes,

As you may be aware, in November 2005, the Commonwealth of Virginia and Northrop Grumman Information Technology, Inc. ("NG") formed a partnership to modernize the state's information technology infrastructure. Under the Comprehensive Infrastructure Agreement arising from this partnership, NG will be providing the Commonwealth with the equipment and services necessary to build and operate IT infrastructure effective July 1, 2006. You may have already been contacted by NG to establish a contract for future goods and services.

In conjunction with those efforts, we anticipate that NG will be managing all of the Commonwealth's needs covered by your contract with the Commonwealth and therefore your assistance is requested. For telecommunication services purchased by the Commonwealth, NG and its contractors will act as our agent for the purpose of contacting you regarding these services. Kindly accept their requests for trouble inquiry, maintenance, support, receiving and reviewing billing, billing inquiry, and or like services, on the Commonwealth's behalf, for the remainder of the term of the above referenced Contract.

Should you have any questions regarding this request, please do not hesitate to contact me. Your cooperation in support of the Commonwealth's new partnership is greatly appreciated.

Sincerely,

Tammy Trexler
tammy.trexler@vita.virginia.gov
Supply Chain Management
VITA

**MODIFICATION #6
TO
CONTRACT NUMBER VA-001214-ARCH
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
ARCH WIRELESS**

This MODIFICATION #6 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and Arch Wireless, hereinafter referred to as "Contractor," relating to Contract VA-001214-ARCH dated December 14, 2000, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification #6 is hereby incorporated into and made an integral part of the Agreement.

Both of the above referenced parties agree to the following:

Reference: Page C-4 of C-12, Paragraph 13 entitled "Modifications":

The Virginia General Assembly passed legislation that abolished the Department of Information Technology (DIT) as of July 1, 2003. All activities and functions of DIT have been consolidated into a new agency that is the Virginia Information Technologies Agency (VITA). Therefore, for purposes of this Contract ("Agreement") all references to either the Commonwealth, or DIT, or VITA, shall have the same meaning.

Reference: Page C-5, paragraph 15, entitled "Term":

Both above referenced parties hereby agree to extend the term of Contract VA-001214-ARCH as specified in the above reference, from June 13, 2006 through December 13, 2006.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-001214-ARCH and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

ARCH WIRELESS

BY: *Dianne Byrnes*
NAME: Dianne Byrnes
TITLE: District Sales Manager
DATE: 6/13/06

COMMONWEALTH OF VIRGINIA

BY: *Doug Crenshaw*
NAME: Doug Crenshaw
TITLE: Strategic Sourcing Manager
DATE: 6/14/06

**MODIFICATION #5
TO
CONTRACT NUMBER VA-001214-ARCH
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ARCH WIRELESS**

This MODIFICATION #5 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and Arch Wireless, hereinafter referred to as "Contractor," relating to Contract VA-001214-ARCH dated December 14, 2000, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification #4 is hereby incorporated into and made an integral part of the Agreement.

The purpose of this Modification #5 is to document both parties' agreement concerning Contract renewal.

Reference: Page C-5; paragraph 15, entitled "Term"

Both above referenced parties hereby agree to extend the term of Contract VA-001214-ARCH as specified in the above reference, from December 14, 2005 through June 13, 2006.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-001214-ARCH and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

ARCH WIRELESS

COMMONWEALTH OF VIRGINIA

BY: *Dianne Byrnes*

BY: *Joe A. Parr*

NAME: Dianne Byrnes

NAME: Joe A. Parr

TITLE: District Sales Manager

TITLE: Tech Contracts Manager

DATE: 12/13/05

DATE: 12/13/05

**MODIFICATION #4
TO
CONTRACT NUMBER VA-001214-ARCH
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ARCH WIRELESS**

This MODIFICATION #4 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and Arch Wireless, hereinafter referred to as "Contractor," relating to Contract VA-001214-ARCH dated December 14, 2000, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification #4 is hereby incorporated into and made an integral part of the Agreement.

The purpose of this Modification #4 is to document both parties' agreement concerning Contract renewal.

Reference: Page C-5; paragraph 15, entitled "Term"

Both above referenced parties hereby agree to extend the term of Contract VA-001214-ARCH as specified in the above reference, from December 14, 2004 through December 13, 2005.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-001214-ARCH and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

ARCH WIRELESS

BY: _____

NAME: R. Jeffrey Wright

TITLE: District Manager

DATE: October 6, 2004

COMMONWEALTH OF VIRGINIA

BY: _____

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 10/14/04

**MODIFICATION #3
TO
CONTRACT NUMBER VA-001214-ARCH
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ARCH WIRELESS**

This MODIFICATION #3 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and Arch Wireless, hereinafter referred to as "Contractor," relating to Contract VA-001214-ARCH dated December 14, 2000, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification #3 is hereby incorporated into and made an integral part of the Agreement.

The purpose of this Modification #3 is to document both parties' agreement concerning the addition of two-way messaging to the Agreement and to recognize the name change of the Agency.

Reference: Page C-4; paragraph 13, entitled "Modifications":

- Both above referenced parties hereby agree to add Two-Way Messaging to the Agreement as delineated in Tables 1 and 2 herein.

**Table 1.
Two-Way Messaging
Includes Nationwide Roaming**

Product	Service Only (Per Month) (Arch Network)	Overcalls (Per Character)
10,000 Characters	\$9.95	\$0.0010
25,000 Characters	\$13.95	\$0.0007
75,000 Characters	\$17.95	\$\$0.0006
Unlimited	\$19.95	N/A
Additional Services and Equipment		
T-900 Purchase	\$99.00 Each	
Percomm E80 Purchase	\$99.95 Each	
P-935 Purchase	\$199.00 Each	
T-900/E80 Maintenance	\$3.95 (per month)	
P-935 Maintenance	\$3.95 (per month)	
Personal Toll Free Number	\$5.00 (per month)	
Voice Mail	\$4.00 (per month)	
Operator Dispatch	\$7.95 (per month)	

**Table 2.
Two-Way Messaging – Rental and Service
Includes Nationwide Roaming**

Product	Arch Network T900	Arch Network P935	Arch Network E80	Overcalls (per character)
25,000 Characters	\$13.95 (Per month)	N/A	N/A	\$0.0007
75,000 Characters	\$17.95 (Per month)	N/A	N/A	\$0.0006
Unlimited	\$24.95 (Per month)	\$29.95 (Per month)	\$39.95 (Per month)	N/A

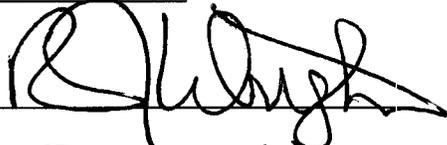
2. The Virginia General Assembly passed legislation that abolished the Department of Information Technology (DIT) as of July 1, 2003. All activities and functions of DIT have been consolidated into a new agency that is the Virginia Information Technologies Agency (VITA). Therefore, for purposes of this Contract ("Agreement") all references to either the Commonwealth, or DIT, or VITA, shall have the same meaning.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-001214-ARCH and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

ARCH WIRELESS

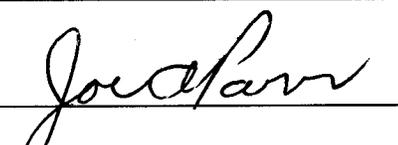
BY: 

NAME: R. J. Wright

TITLE: DISTRICT MANAGER/SVA

DATE: 5/12/2004

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: 5/13/04

**MODIFICATION #2
TO
CONTRACT NUMBER VA-001214-ARCH
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ARCH WIRELESS**

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and Arch Wireless, hereinafter referred to as "Contractor," relating to Contract VA-001214-ARCH dated December 14, 2000, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification #2 is hereby incorporated into and made an integral part of the Agreement.

The purpose of this Modification #2 is to document both parties' agreement concerning Contract renewal.

Reference: Page C-5; paragraph 15, entitled "Term"

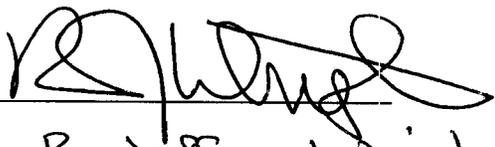
Both above referenced parties hereby agree to extend the term of Contract VA-001214-ARCH as specified in the above reference, from December 14, 2003 through December 13, 2004.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-001214-ARCH and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

ARCH WIRELESS

BY: 
NAME: R. Jeffrey Wright
TITLE: District Manager
DATE: 11/4/2003

COMMONWEALTH OF VIRGINIA

BY: 
NAME: Joe A. Parr
TITLE: Tech Contracts Manager
DATE: 10/30/03

02 SEP 34 PM 3:42

**MODIFICATION #1
TO
CONTRACT NUMBER VA-001214-ARCH
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ARCH WIRELESS**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and Arch Wireless, hereinafter referred to as "Contractor," relating to Contract VA-001214-ARCH dated December 14, 2000, as amended, hereinafter referred to as the "Contract" or "Agreement." This Modification #1 is hereby incorporated into and made an integral part of the Agreement.

The purpose of this Modification #1 is to document both parties' agreement concerning Contract renewal.

Reference: Page C-5; paragraph 15, entitled "Term"

Both above referenced parties hereby agree to extend the term of Contract VA-001214-ARCH as specified in the above reference, from December 14, 2002 through December 13, 2003.

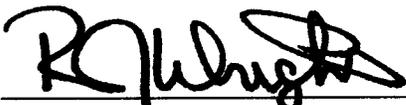
The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-001214-ARCH and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

ARCH WIRELESS

COMMONWEALTH OF VIRGINIA

BY: 

BY: 

NAME: R. J. Wright

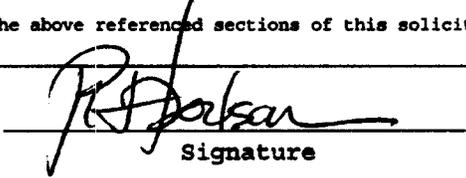
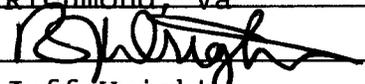
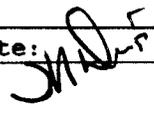
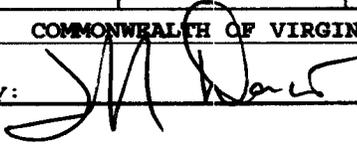
NAME: Joe A. Parr

TITLE: District Manager

TITLE: Contracts Engineer

DATE: 10/2/2002

DATE:  September 30, 2003

SOLICITATION, OFFER AND AWARD DATA PROCESSING / TELECOMMUNICATIONS					FIN: 22-3317420	
1. Contract No: VA-001214-ARCH	2. IFB No: 2001-008	3. Date Issued: Oct 20, 2000	Date Due: Nov 9, 2000	4. APR 21	5. Approval No: C-33	
For Information Call: Teresa Hudgins TMH (804) 371-5919						
6. ISSUING OFFICE: Department of Information Technology Acquisition Services Division 110 S. 7th Street, Lobby Floor Richmond, Va. 23219-9300 ATTN: Bid Section			7. SHIP TO: Using agency as specified on orders			
SOLICITATION						
8. Sealed bid(s) for furnishing the Products and Services set forth in the schedule, will be returned to the Issuing Office identified in block 6 above. Please provide an original and 0 copies. If hand carried, deliver to the ASD receptionist located on the Lobby Floor of the address listed in Block 6. Bids must be received prior to 2:00 p.m. local time Nov 9, 2000. CAUTION - LATE OFFERS: See Paragraph 3 of the Solicitation Instructions						
This is an advertised solicitation which consists of (1) the schedule of Products and Services, pages 2 thru 8; (2) the solicitation instructions pages S-1 thru S-3; (3) The Contract Terms and Conditions page C-1 thru C-12; and (4) other provisions, representations, certifications or specifications as are attached or incorporated herein by reference. Offers will be publicly opened at: 2:10 p.m. local time Nov 9, 2000, in the ASD Conference Room, 110 South 7th Street, Lobby Floor. All offers are subject to the terms and conditions set forth in the above referenced sections of this solicitation.						
Paul H. Dodson, Director Acquisition Services			 Signature			
OFFER						
In compliance with the terms and conditions set forth in the solicitation, the undersigned agrees, if this offer is accepted within 90 calendar days from the date of receipt of offers, to furnish any or all items awarded at the prices offered in the schedule, delivered to the address in block 7, within the time specified in the schedule.						
9. CONTRACTOR: Company Name: <u>Arch Wireless</u> Address: <u>3805 Gaskins Road</u> City, State: <u>Richmond, Va</u> Signature:  Name (Typed): <u>Jeff Wright</u> Title: <u>District Manager</u> Phone: <u>(804) 747-7526</u>			10. BILL TO: Using agency as specified on orders			
AWARD						
11. Accepted as to Item Numbers: all			12. Amount: per order		13. Award Date: 12-14-00 	
14. Name of Contracting Officer: Jeff Davis Contracts Manager			15. COMMONWEALTH OF VIRGINIA By: 		PAGES: 1 of 8	

DIT-62A		SCHEDULE		IFB NO.	Page:
01/15/91				01-008	2 of 8
NAME OF CONTRACTOR			REQUIRED DELIVERY DATE:	INITIALS	
			(RDD) 30 DAYS ARO		
ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE
Eastern Shore/Northern Neck & Peninsula/ Tidewater areas					
1.	Digital Numeric Paging Service (Unlimited pages) (To include paging device)	1	mo.	\$3.54	\$3.54
2.	Alphanumeric Paging Service (Unlimited pages) (To include paging device)	1	mo.	\$7.83	\$7.83
3.	Statewide Alphanumeric Paging Service (Unlimited pages) (To include paging device)	1	mo.	\$9.27	\$9.27
4.	Activation Fee - Digital Numeric (if applicable)	1	ea.	0	0
5.	Activation Fee - Alphanumeric (if applicable)	1	ea.	0	0
6.	Replacement of lost/stolen Numeric device	1	ea.	\$38.00	\$38.00
7.	Replacement of lost/stolen Alphanumeric device	1	ea.	\$99.00	\$99.00
8.	Universal Service Fund Fee (if applicable)	1	mo.	.33	.33
Bidder: In the space below, indicate any mandatory governmental surcharges and taxes not otherwise stated above.					
None					
ALL PRICES ARE TO INCLUDE THE IFA AS DELINEATED IN THE ATTACHED TERMS AND CONDITIONS.					

1. Purpose

The purpose of this Invitation for Bids (IFB) is to solicit sealed bids to establish a secondary contract for paging services for primary coverage in the Eastern Shore/Northern Neck regions of the Commonwealth. The contract that results from this IFB will be for State agencies, institutions and other public bodies as defined in Section 11-37 of the Virginia Public Procurement Act (VPPA), which have coverage issues that cannot be addressed by the existing state contract for paging services. The resulting contract shall be accessible to Commonwealth users on an "exception" basis, as determined by the Department of Information Technology, Director of Telecommunications.

2. Scope of Work

2.1 The Contractor shall provide digital numeric and alphanumeric paging service in the following geographical locations:

- From the Maryland/Virginia state line on the Eastern Shore of Virginia (to include Greenbackville, Assateague, Chincoteague and Saxis) extending South the full length of the Eastern Shore, including its coastal ocean waters and continuing South to the Virginia/North Carolina State line;
- Across the Chesapeake Bay waters and adjoining tributaries;
- Northern Neck of Virginia including the counties of Essex, Gloucester, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland
- Tidewater/Peninsula area to include the counties of, Isle of Wight, James City, Surry, and York; also the cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg.
- Central/Northern Virginia area to include the counties of Caroline, Charles City, Chesterfield, Fairfax, Hanover, Henrico, New Kent, Prince George, Prince William, Spotsylvania, and Stafford; also the cities of Alexandria, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hopewell, Petersburg, and Richmond.

Bidder: Provide with your bid response an engineering propagation chart, verifying service coverage areas. Marketing brochures are not acceptable as verification of existing service coverage.

2.2 Pagers shall be programmed with local exchange phone numbers. Initially local exchange numbers shall be required for the Eastern Shore (Wachapreague, VA), Gloucester Point, VA, and the Peninsula (Newport News) area of Virginia. Pagers shall be capable of receiving pages as far North as Salisbury, MD.

- 2.3 The Contractor shall provide a maximum of 20 pagers with statewide service, to include all specific areas addressed above, for the Virginia Marine Resource Commission with service initiating from Newport News, VA.

3. General

- 3.1 Award, if made, will be to the responsive and responsible bidder with the lowest evaluated price. The evaluated price will be based on an annual (12 months) total for 17 numeric pagers, 102 alphanumeric pagers, five (5) statewide alphanumeric pagers, 124 activation fees (if applicable) and the cost of replacing one (1) numeric and one (1) alphanumeric pager.

Evaluation Scenario: **(Bidder's do not fill in)**

<u>Description</u>	<u>Qty.</u>	<u>Unit Price</u>	<u>Term</u>	<u>Extended Price</u>
Digital numeric pager	17	\$ _____	12	\$ _____
Alphanumeric pager	102	\$ _____	12	\$ _____
Statewide alphanumeric pager	5	\$ _____	12	\$ _____
Activation fee (one time fee)	124	\$ _____	N/A	\$ _____
Numeric pager replacement	1	\$ _____	N/A	\$ _____
Alphanumeric pager replacement	1	\$ _____	N/A	\$ _____

Total Evaluation Price: \$ _____

There are no quantities of paging customers guaranteed by this contract. The quantities listed are solely to weigh the Bidders prices for award evaluation based on the Commonwealth's knowledge of the existing required services.

- 3.2 The contract awarded as a result of this solicitation shall be for two (2) years. The Commonwealth, at its sole discretion, reserves the right to renew the contract, at the prices quoted or less, for up to three (3) additional one (1) year periods. Should the Commonwealth elect to exercise this option, the Contractor will be notified of the state's decision not less than thirty (30) days prior to the expiration of the initial contract or subsequent renewal period(s).
- 3.3 State agencies, institutions of higher education and other public bodies may purchase from the awarded contract following receipt of a waiver/authorization from the Department of Information Technology, Director of Telecommunications. All orders placed with the Contractor will have a waiver/authorization attached. The Contractor shall not issue any pagers until such waiver is received which authorizes the Contractor to process the request. The term of orders placed by users of the contract will be on a month-to-month basis as stated on the ordering document. The Commonwealth may cancel individual pager service with 30 days notice to the Contractor.

- 3.4 All pricing shall include DIT's Industrial Funding Adjustment provisions, to include the Contractor's Report of Sales, as indicated in the attached terms and conditions.
- 3.5 By signing this solicitation, the Bidder agrees that the invoice price to the Commonwealth for any contract item shall be the best price available to any governmental entity located in the Commonwealth of Virginia for the duration of the contract. In the event that, during the term of the contract the Contractor has delivered the products or services proposed herein at a lower cost, the Commonwealth will be entitled to the lump sum difference in pricing for all products or services purchased from the date of the infraction.
- 3.6 The Bidder should note that DIT is a provider of telecommunications services to state agencies, institutions of higher education and other public bodies of the Commonwealth of Virginia. **If in the future**, it is in the best interest of the Commonwealth for DIT to provide centralized ordering, billing and reconciliation of invoices and payments for the Contract that results from this solicitation, the Contractor will be required to provide all invoices to DIT in hardcopy (paper) and softcopy (magnetic media) formats. The magnetic media must use IBM EBCDIC standard 18 or 36 track cartridges. Also, the amounts on both the hardcopy and softcopy invoices must be the same.
- 3.7 The results of this solicitation will not be given out by telephone. Bidders wishing a copy of the bid results must include a self-addressed, stamped envelope along with their bid. The envelope should be marked with the words "BID RESULTS" and the IFB number. Results will be made available as soon as a decision is made.
- 3.8 **BIDS WILL NOT BE CONSIDERED IF THE VENDOR IS NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY (DIT). A registration form must be on file or received by DIT/Acquisition Services Division not later than the award date. Bidders may obtain the registration form via the Acquisition Services Division website <http://asd.state.va.us/asd/vendapp.pdf> or call (804) 371-5900 to request a registration form.**
- 3.9 Bidder's attention is directed to Section 2.b, page s-1, of the Solicitation Instructions concerning the requirement for Federal Identification Numbers (FIN) to be placed on page 1 of the Invitation for Bids (IFB). If this IFB was mailed to you, in the initial mailing from DIT, your address label will reflect the FIN number on file for your company. Please place this number in the space provided on page 1. If the number is incorrect, please provide the incorrect number and the correct number and we will revise your registration to reflect the correct number. **PLEASE NOTE THAT FAILURE TO SUPPLY THIS NUMBER MAY RESULT IN OUR INABILITY TO VERIFY YOUR REGISTRATION AND YOUR BID BEING RULED NON-RESPONSIVE.**

- 3.10 It is the responsibility of the Bidder to understand all requirements and specifications contained in this solicitation. All questions and/or comments concerning the requirements, specifications, or other information provided in this solicitation must be submitted in writing to the Issuing Office to the attention of Teresa M. Hudgins. The written questions may be submitted via e-mail to thudgins@dit.state.va.us or via facsimile transmission to (804) 371-5969.
- 3.11 In the event the selected Contractor defaults, the Commonwealth reserves the right to award to the next lowest responsive and responsible Bidder.
- 3.12 Contractor shall provide local service representatives for the Wachapreague, Gloucester Point, and Peninsula Virginia locations for the reporting of service problems encountered by the Commonwealth while using the services during normal business hours (8:00 a.m. – 5:00 p.m, Monday through Friday, excluding state holidays). For other than normal business hours, an 800 number shall be provided which is staffed and available twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays.
- 3.13 The Contractor shall provide a suitable paging device (new or refurbished) with the establishment of each account. The device shall remain the property of the Contractor unless they indicate otherwise. The Contractor shall repair or replace any failing device within 24 hours as long as the contract is in effect. The Commonwealth will notify the Contractor and pay a replacement cost for any lost or stolen devices at the rate identified in the schedule. Lost belt clips, battery covers, etc. shall be replaced by the Contractor at no charge.

Digital numeric Pagers supplied must have selectable tone and vibrator alarm and capable of displaying and storing a minimum of five (5) pages with a minimum of twelve (12) digits. Scrolling may be used to display numbers with more than twelve (12) digits. Pagers must be able to recognize a duplicate page and not record it as a second individual page. The display must be lighted for dark or low light areas. The ability to program multiple numbers to the pager is required.

Alphanumeric Pagers must have a selectable tone and vibrator alarm, and be capable of storing and displaying a minimum of (20), eight (8) character messages. Scrolling may be used to display characters. Pagers must be able to recognize a duplicate page and not record it as a second individual page. The display must be lighted for dark or low light areas. The ability to program multiple numbers to the pager is required.

All proposed pagers must use standard 1.5 volt, AA or AAA size alkaline or rechargeable batteries. If a rechargeable battery is offered, the pager shall be supplied with a charger.

4. Service Order Processing

- 4.1 The Contractor shall appoint a customer service representative to be named at the time of award that will be the Commonwealth of Virginia prime point of contact for the duration of the contract. Orders will be placed directly to the Contractor by a using agency that has received a written waiver/authorization from the Department of Information Technology, Director of Telecommunications. It shall be the Contractor's responsibility to obtain a copy of the waiver acknowledging the using agency's authorization to utilize the Contract. All orders will be processed through the Contractor customer service representative, via, facsimile, e-mail or other acceptable ordering method.
- 4.2 Upon processing a properly issued order, the Contractor must provide the using agency written confirmation within 48 hours that the service requested will be delivered as ordered, or amended with approval from an Ordering Officer. The written confirmation must include the Contractor's service order number, the newly assigned pager telephone number, service installation date, and the telephone number of the Contractor's representative responsible for processing the order.
- 4.3 The Commonwealth shall be rebated, or credited, a prorated hourly portion of the applicable monthly service charges for each occurrence during which the Commonwealth is denied use of the service for eight (8) hours or more during any consecutive thirty (30) day period. The rebate shall apply to the initial eight (8) hours and all additional hours, or portions hereof, during which the Commonwealth is denied access to the service.

5. Mandatory Invoicing Requirements

- 5.1 The Contractor shall furnish the using agency, one consolidated detailed monthly invoice that itemizes all services purchased from the contract. The monthly bill shall at a minimum include the following information:

- Invoice Number*
- Invoice Date*
- Pager ID (phone number, PIN)*
- Using Agency Name
- Using Agency Location (address)Address
- Fixed monthly charges*
- Credits (if any)*
- Number of pages (Informational only)
- Total Monthly Charge*
- Contractor's Federal Employer Identification Number (FEIN)

Asterisks indicate mandatory fields. The other fields are highly desirable and must be provided if the Contractor's system collects such information.

- 5.2 **Failure to submit adequate billing details will result in non-payment of the invoice.**
- 5.3 **Contractor invoices must include the Contractor's Federal Identification Number (FIN).**
- 5.4 **The Commonwealth is exempt from paying most taxes; therefore, the Contractor's invoices shall not include these taxes.**
- 5.5 **The Contractor must provide an individual to function as the single point of contact for all billing matters pertaining to the Contract as a result of this solicitation. A person to function as a backup contact must also be assigned to address account billing matters during times when the primary contact is unavailable. At or before the time the contract is executed, the intended Contractor must provide the names, addresses, and voice and facsimile telephone numbers for the contact and back up persons for billing matters.**

**CONTRACTUAL TERMS AND CONDITIONS
INVITATION FOR BIDS (IFB) #01-008**

GENERAL PROVISIONS

1. SCOPE OF CONTRACT

The following paragraphs contain the contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State", or "DIT" (Department of Information Technology) will acquire paging services ("Services") for primary coverage in the Eastern Shore/Northern Neck regions of the Commonwealth on behalf of all State agencies, institutions and other public bodies ("Users") as defined in Section 11-37 of the Virginia Public Procurement Act ("VPPA"), from the Contractor identified in block #9, page 1 of the Solicitation, hereinafter referred to as "the Contractor."

The resulting Contract may be used by all Users which have coverage issues that cannot be addressed by the existing statewide contract for paging services on an "exception" basis, as determined by the Director of Telecommunications, DIT. All "Services" as delineated herein include the cost of the pager.

2. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor in this solicitation as to hardware performance, or other physical design or functional characteristics of that which is offered;

3. SERVICE COMMENCEMENT DATE

- a. The Contractor shall be prepared to commence paging Services identified in the Schedule within fifteen (15) calendar days from receipt of the fully executed contract (IFB 01-008) signed by the Contracts Manager, DIT. The commencement of Services shall require the Contractor to deliver pagers/paging services to individual users upon receipt of an order from the User. A waiver/authorization from the Director of Telecommunications, DIT must accompany the order. The Contractor shall not deliver any pagers/paging service until such waiver is received which authorizes the Contractor to process the order.
- b. Any amendment by the State to this Contract or any part thereof, may require the establishment of a new mutually agreed to service commencement date. The State may delay the installation date by notifying the Contractor at least ten (10) days before the required installation date.

- c. If the Service(s) are not delivered within the time specified herein, the State reserves the right to cancel the award of this Contract and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder. Contractors are cautioned that failure to deliver the proposed Services as stated in response to a solicitation document may result in removal from DIT's Vendor Registration File as per Section 7.20 of the Division of Purchases and Supply's Vendor's Manual dated December 1998.
- d. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

4. ORDERS

All orders for Services will be placed directly to the Contractor by the User. Each individual order must be accompanied by a written waiver/authorization from the Director of Telecommunications, DIT. All orders will be processed through the Contractor's Customer Service representative by facsimile, e-mail or other acceptable ordering method.

5. TAXES - FEDERAL, STATE AND LOCAL

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes; such taxes shall not be included in Contract prices. Tax exemption certificates will be furnished if requested by the Contractor.

6. SERVICES

During the term of this Contract, the vendor is not authorized to substitute any Service identified in the Schedule without the written permission of the Director, Acquisition Services Division, DIT. Violation of this condition shall be considered grounds for termination of the Contract.

7. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any Equipment, Software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.1-122 and Section 2.1-127 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of Equipment or Software furnished hereunder with any Equipment or Software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such Equipment or Software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the Software, the Contractor agrees to take back the infringing Equipment, Software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs of paragraph 9. above.

8. NON-APPROPRIATION

All funds for payment of Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of nonappropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those Services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for Services dependent on such federal funds without further obligation.

9. ASSIGNMENT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement shall not be assignable, in whole or in part, to any other party without the Department of Information Technology's (DIT's) written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the DIT purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on DIT's "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager DIT. Upon DIT's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Controller, Department of Information Technology of the assignment and shall supply the Controller with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment.

In the event DIT receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Agreement, Contractor agrees that payment or other performance in

respect of those rights shall not be due until at least thirty days after the DIT's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Acquisition Services Division of DIT shall promptly notify the Contractor of any assignment notice it receives.

10. GOVERNING LAW

This Contract and any disputes arising hereunder shall be governed in accordance with the laws of the Commonwealth of Virginia and shall be deemed to have been executed and entered into within the Commonwealth of Virginia. Any litigation arising in connection with this agreement shall be brought in the courts of the Commonwealth of Virginia. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

If any term or provision of this Contract shall be found to be illegal or unenforceable, then, notwithstanding such provision, the remainder of this Contract shall remain in full force and effect, and such term or provision shall be deemed null and void.

11. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

12. ENTIRE AGREEMENT

This Contract, the solicitation, bid response, solicitation instructions, attachments, if any, and all Services specifically listed in the Schedule constitute the entire agreement between the parties with respect to the subject matter of this Contract. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to Services acquired by the State under the terms and conditions of this Contract.

No other written documents regardless of form or content shall be executed by any agency or institution for Services acquired under this Contract unless signed by the Contracts Manager, DIT, or his alternate as designated by the Director, DIT.

13. MODIFICATIONS

This Contract may be modified in accordance with Section 11-55 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modification to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, the only authorized representative for the Commonwealth shall be the Contracts Manager, DIT of this solicitation or his duly designated alternate, and for the Contractor the person signing the bid. Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

14. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

15. TERM

The term of this Contract shall be for a period of two (2) years from the date of execution of this Contract by the Contracts Manager, DIT. The Commonwealth at its sole option may extend the term of this Contract for three additional one-year periods at the prices contained herein. The Contractor shall be given thirty days advance written notice of the Commonwealth's intention to extend the term for such additional periods.

16. VIRGINIA PUBLIC PROCUREMENT ACT

Employment Discrimination by Contractor Prohibited (Section 11-51, Code of Virginia).

- a. During the performance of this Contract, the Contractor agrees as follows:
 - 1) The Contractor will not discriminate against employee or applicant for employment because of race, religion, color, sex or national origin, or disabilities except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state such Contractor is an equal opportunity employer.
 - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- b. The Contractor will include the provision of the foregoing paragraphs a.1, a.2 and a.3 in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

17. ADDITIONAL CERTIFICATIONS

Contractor hereby certifies its compliance with the following:

- a. Virginia Fair Employment Contracting Act.
- b. Virginia Governmental Frauds Act.
- c. Virginia Public Procurement Act.
- d. Federal Immigration Reform and Control Act of 1986.
- e. Virginians with Disabilities Act.
- f. Americans with Disabilities Act.
- g. Federal Civil Rights Act of 1964.

18. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

19. LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

20. CONTINGENT FEE WARRANTY

The Contractor warrants that he/it has not employed or retained any person or persons not generally associated with Contractor for the purpose of soliciting or securing this agreement. The Contractor further warrants that he/it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon the award or making of this agreement. For breach of one or both of the foregoing warranties, the Commonwealth shall have the right to terminate this agreement without liability, or in its discretion, to deduct from the agreed fee, payment or consideration, or otherwise recover, the full amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.

21. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All Services (each delivery/activation of individual pagers) are subject to inspection and testing by the State, and any which do not meet or exceed the specifications or other requirements of the Contract may be rejected. The State shall be given seventy-two (72) hours from the date of delivery by the Contractor to test, evaluate and accept the Services delivered or furnished under this Contract (provided that the using agency, in its sole discretion, may accept the same prior to expiration to the seventy-two (72) hour period). If the Contractor's Services fail to meet the Contract specifications or other requirements, including those required by the Contractor's own technical documentation, then the same may be rejected and returned to the vendor. Such rejection will terminate this Contract and exempt the State from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of making payment, however, acceptance by the State following testing and evaluation during the seventy-two (72) day period shall not be conclusive that the Services conform in all respects to the Contract specifications and other requirements. In the event that nonconformance therewith is discovered by the State after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the Services to the Contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of Contract for which the State may exercise the remedies provided in the section herein entitled "Termination and Cancellation," in addition to and not in lieu of any other remedies available under Virginia law.

22. TERMINATION AND CANCELLATION

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this agreement, (a) the vendor shall fail to deliver the Services required by this Contract or (b) the vendor shall repeatedly fail to respond to requests for maintenance or other services within the time limits set forth in the Contract or (c) the vendor shall breach any of the other terms set forth within this agreement or (d) the vendor shall fail to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the vendor ten (10) days to cure the failure/nonperformance. If the vendor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the agreement for Default.

In such event the Commonwealth will only be liable for cost incurred to the date of termination. All costs, including, the return of the Equipment will be the vendor's expense.

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this agreement.

23. TERMINATION FOR CONVENIENCE – SERVICES

The Commonwealth may terminate this Agreement or any individual order for Services at any time upon thirty (30) days advance written notice. For purposes of this Agreement, such notice shall only

be issued by the Contracts Manager, DIT for the Agreement, and by the User's contracting authority for individual orders. There shall be no termination liability or other costs associated with the termination of an Individual order or this Agreement.

24. FAILURE TO DELIVER

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the Services set forth in the Schedule, Commonwealth may, in its own discretion, give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the Services from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original Contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the Services which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.

25. SERVICES WARRANTY

All Services purchased under this Agreement remain under warranty for the time period commencing after acceptance by the Commonwealth and continuing to expiration of the Agreement, or discontinuance of the Services at the discretion of the Commonwealth.

Contractor shall deliver and maintain the Services as described herein. In addition, the Contractor shall provide a single point of contact for the reporting of service problems encountered by the Commonwealth. The Contractor shall provide local service representatives for the Wachapreague, Gloucester Point, and Peninsula Virginia locations for the reporting of service problems during normal business hours (8:00 a.m. to 5:00 p.m.), Monday through Friday, excluding state holidays. The Contractor shall also provide an "800" telephone number twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays for the reporting of service problems during non-business hours.

The Contractor shall repair or replace any failed pager within twenty-four (24) hours after notification by the Commonwealth. Lost belt clips, battery covers, and other accessory items shall be replaced by the Contractor at no cost to the Commonwealth. The Commonwealth will notify and pay the Contractor a replacement cost for any lost or stolen pagers at the rate identified in the Schedule.

26. DISPUTES

Contractual claims whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a Contract from requiring submission of an invoice for final

payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The public body will render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

A Contractor may not institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that Agency fails to render such decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 11-70, Code of Virginia or Administrative Appeals Procedure Section 11-71, Code of Virginia.

Any dispute, claim or cause of action filed by Contractor (or any party making such claim on behalf of or under the rights of Contractor, his agents or any subcontractor) shall be governed by Sections 11-69, 11-70, 11-71, Code of Virginia (1950), as amended, and any period of limitation set forth therein.

27. INVOICES

All invoices shall be rendered promptly after all Services covered by the invoice have been accepted. No invoice may include any costs other than those identified in the Schedule. Invoices shall provide at a minimum:

1. Type and description of the Service;
2. Serial number, if any;
3. Charge for each item (Service);
4. This Contract Number, and;
5. Contractor's Federal Identification Number (FIN);

28. PROMPT PAYMENT

Payment shall be due within thirty (30) days after (1) acceptance of all Services, (2) receipt of a correct invoice for such payment, and (3) when applicable, receipt of the payment instruction form referenced in the paragraph entitled ("Assignments"), whichever is latest. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due the Commonwealth under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

In accordance with the Virginia Public Procurement Act, all proper charges for which payment is more than seven (7) days overdue shall accrue interest as provided in Sections 11-62.1 through 11-62.9 of the Code of Virginia. The rate of interest shall be determined in accordance with Section 11-62.5 of the Code of Virginia. In no event shall any interest penalty accrue, however, when payment is delayed because of a disagreement between the Commonwealth and the Contractor regarding the quantity, quality or time of delivery of any Service or the accuracy or correctness of

any invoice. The Contractor shall notify the Fiscal Officer of the state agency, institution or other public body of all invoices that are in excess of thirty (30) days old.

b. PAYMENTS TO SUBCONTRACTORS

In accordance with Section 11-62.11 of the Code of Virginia, within seven days after receipt of amounts paid to the Contractor by the Commonwealth for work performed by a subcontractor, the Contractor shall:

- c. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor, or
- d. Notify the agency and subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor shall pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the Commonwealth for work performed by the subcontractor, except for amounts withheld as allowed in (b) above. The Contractor shall provide its federal employer identification number (or social security number, if Contractor is an individual) to the Commonwealth as required by Section 11-62.11 (2) of the Code of Virginia. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent per month. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. Nothing in this paragraph shall be construed as creating any obligation on the part of the Commonwealth or as authorizing any additional charge to the Commonwealth.

29. THIRD PARTY BILLING

All Services provided under this Contract, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which state agency, institution, or public body is being billed.

30. CREDITS

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

31. PRIORITY OF SERVICE (DELIVERY)

The Commonwealth of Virginia requires that Contractor provide delivery equal to or better than that provided its commercial and retail customers. Contractors who fail to comply with this provision are advised that such action shall be considered grounds for termination of this Contract. Contractors whose contracts are terminated for such action may be placed on DIT's List of Debarred/ Ineligible Bidders in accordance with Section 7.16 of the Division of Purchases and Supply's Venders Manual dated January 1995.

32. CONTRACTOR'S REPORT OF SALES

Within 30 days of Contractor's receipt of payment for all Equipment, the Contractor shall compile and submit a report of the sale/s. For all subsequent sales, i.e., ongoing On-Site Maintenance or other Services, the Contractor will report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

33. INDUSTRIAL FUNDING ADJUSTMENT

The Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 30 days of receipt of payment for Equipment initially, and at the end of each quarter thereafter, as delineated in the above paragraph entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total monies remitted by the Commonwealth for any sales under this Agreement. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in the above paragraph. The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DIT that validates agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT, 110 S. 7th Street, 3rd Floor, Richmond, VA, 23219.

If the full amount of the IFA is not paid within 30 calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

34. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have worker's compensation insurance in accordance with §§ 11-46.3 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that it and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. WORKER'S COMPENSATION – Statutory requirements and benefits; require that the Commonwealth of Virginia be added as an additional named insured on Contractor's policy.
2. EMPLOYERS LIABILITY - \$100,000
3. GENERAL LIABILITY - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.
4. AUTOMOBILE LIABILITY - \$500,000 – Combined single limit.

35. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.